



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Introduce Ordinance Amending Lodi Municipal Code, Title 2, Administration and Personnel, by Repealing and Reenacting Chapter 2.12.060(T) relating to the Contract Authority of the City Manager; and Title 3, Revenue and Finance, by Repealing and Reenacting Chapter 3.20 relating to the Purchasing System (FIN)

MEETING DATE: August 17, 2005

PREPARED BY: James R. Krueger, Finance Director

RECOMMENDED ACTION: That the City Council introduce an Ordinance amending Lodi Municipal Code Title 2, Administration and Personnel, by repealing and reenacting chapter 2.12.060(T) relating to the contract authority of the City Manager; and Title 3, Revenue and Finance, Chapter 3.20 by repealing in its entirety and reenacting a revised Chapter 3.20 relating to the City's Purchasing System.

BACKGROUND INFORMATION: On March 8, 2005, the City Council received a briefing by the City Manager and staff regarding the City's purchasing policy and procedures.

The basis for the City's purchasing system is Chapter 3.20 of the Municipal Code. Much of the chapter is based on Ordinance 630, which dates to December 3, 1958. At that time, competitive quotes were required on purchase amounts over \$100, while the formal bidding process applied to purchases greater than \$2,000.

In April, 1967, Ordinance 839 increased to \$4,000 the minimum dollar amount required for formal bidding, while the informal quote minimum remained at \$100. Ordinance 1333, adopted in August, 1984, provided for change in the formal bidding threshold to \$5,000, and it has remained at that level for the past 21 years. The \$100 informal quote minimum has remained unchanged since 1958.

Staff is recommending a significant revision of Chapter 3.20 of the Lodi Municipal Code, not only to update the bidding thresholds but also to incorporate language that reflects more current trends. Examples include provisions for purchase and use of computer hardware and software, greater use of established supply or service agreements made by larger California public agencies (sometimes known as 'piggybacking'), and addition of certain definitions, restrictions, and contract guidelines set forth in the California Government, Commercial, and Public Contract Codes.

The most significant change in the ordinance is the designation of purchasing authority to the City Manager of up to \$20,000 and Department Heads up to \$5,000. These changes were approved with a straw vote taken by the Council at the March 8, 2005 shirtsleeve meeting.

A purchasing procedures and practices manual, which incorporates the changes to be implemented with this ordinance, will be distributed to City staff and additional training will be provided to ensure appropriate staff are fully aware of how to comply with this ordinance.

APPROVED: 
Blair King, City Manager

FISCAL IMPACT:

Indeterminate. Costs on some lower value items (below \$500) may increase, but should be offset by improved staff efficiencies. The changes would also place greater fiscal responsibility on department heads to manage department purchases.

FUNDING:

None required.


James R. Krueger, Finance Director

Attachment: Proposed Revised Chapters 2.12.060(T) and 3.20, Lodi Municipal Code
Prepared by Joel Harris, Purchasing Officer
cc: City Attorney

DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 2 - ADMINISTRATION AND PERSONNEL, CHAPTER 2.12 "CITY MANAGER" BY REPEALING AND REENACTING SECTION 2.12.060(T) RELATING TO CONTRACT AUTHORITY OF THE CITY MANAGER; AND FURTHER AMENDING LODI MUNICIPAL CODE, TITLE 3 - REVENUE AND FINANCE BY REPEALING AND REENACTING CHAPTER 3.20 IN ITS ENTIRETY RELATING TO THE PURCHASING SYSTEM

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Title 2 "Administration and Personnel" Chapter 2.12 "City Manager" is hereby amended by repealing and reenacting Section 2.12.060(T) - relating to contract authority of the City Manager, and shall read as follows:

2.12.060 (T) Contracts: To execute on behalf of the City, without City Council approval, contracts, as defined in Lodi Municipal Code 2.20.015, in the amount of twenty thousand dollars or less, and to delegate authority to subordinate officers and employees to execute contracts without city council or city manager approval contracts in the amount of five thousand dollars or less. Nothing in this section shall allow departure from the other purchasing requirements of Chapter 3.20 of this Code. For contracts of not less than \$5,000 nor greater than \$20,000, the City Manager shall quarterly prepare for the city council a report which includes a list of the contracts into which the city has entered during the previous three months. No contract shall be split into smaller segments to avoid the provisions of this subsection. (Gov't Code § 4526, Public Contract Code § 10359)

Section 2. Lodi Municipal Code Title 3 "Revenue and Finance" Chapter 3.20 "Purchasing System" is hereby repealed and reenacted in its entirety, and shall read as follows:

Sections:

3.20.010	Purpose
3.20.015	Definitions
3.20.020	Purchasing Officer - Established
3.20.030	Purchasing Officer - Powers
3.20.040	Exemptions from centralized purchasing
3.20.045	State and Local Agency Contracts
3.20.060	Requisitions
3.20.070	Bidding
3.20.075	Professional/Technical Services Contracts
3.20.076	Contract Authority
3.20.077	Electronic Hardware and Software
3.20.080	Purchase Orders
3.20.090	Use of unencumbered funds required
3.20.095	State and Federal Grants
3.20.100	Formal contract procedure
3.20.105	Public Projects
3.20.110	Open market procedure
3.20.115	Split Transactions
3.20.120	Inspection and testing of purchases
3.20.130	Vehicle Purchases and Disposition Exemption
3.20.140	Restrictions
3.20.150	Penalty for violation

3.20.010 Purpose

In order to establish efficient procedures for the purchase of supplies, services and equipment, to secure for the city supplies, services and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a centralized purchasing system is adopted. (Prior Code §2-55)

Except as specified in Section 3.20.040 herein, there shall be no exemption from centralized purchasing, and no agency or department shall be authorized to purchase, or contract for the purchase of supplies, materials, services or equipment independently of the purchasing system.

3.20.015 Definitions

As used in this chapter the following terms shall have the following respective meanings:

- A. "Best Value" is associated with determining the greatest worth and benefit to the City based on a number of factors, including
 - 1) Cost;
 - 2) Quality of the product or service;
 - 3) Delivery lead time;
 - 4) Ability of the manufacturer or contractor to provide services, supplies, or equipment as required, and parts, repairs, maintenance and support after the sale;
 - 5) The character, integrity, reputation, judgment, and experience of the manufacturer, contractor, or supplier.
- B. "Bid" may mean a competitive sealed (formal) bid processed in accordance with §3.20.100, or an informal bid processed in accordance with §3.20.110 herein.
- C. "Contract" means a written or oral agreement to expend money on a product or service including but not limited to purchase orders, formal contracts, invoices and oral orders.
- D. "Department" or "using department" means any of the departments of the city government.
- E. "Emergency" shall mean an unforeseen circumstance or combination of circumstances calling for immediate action to procure materials, supplies, equipment, or services in order to make repairs, safeguard lives or property, or maintain public health or welfare, as a result of extraordinary conditions created by war, disease, weather, fire, or other catastrophic or unforeseen occurrence, or imminent or actual failure of any plant, equipment, structure, street or public work.
- F. "Equipment" shall mean items of property which are maintained on inventory as fixed assets. These items are durable and have a fixed, predetermined life expectancy.
- G. "Professional services", as used in this section, shall mean all services which (1) are of an advisory nature, (2) provide a recommended course of action or personal expertise, or (3) have an end product which is basically a transmittal of information either written or verbal and which is related to the governmental functions of city administration and management and city program management or innovation, and which are obtained by awarding a services contract, a grant, or any other payment of funds for services of the above type. In general, "Professional services" are provided by qualified professionals in such disciplines as accounting, architectural, engineering, environmental, financial, legal, and medical fields.

- H. "Public Project" shall mean a project for the erection, improvement, painting or repair of public buildings and works; work in or about streams, rivers, lakes, or embankments for protection against overflow; street, sewer, water and electrical distribution system work except maintenance or repair; furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers. (Public Contract Code § 20161)
- I. "Purchases" shall mean legal transactions (including lease and rental) by which the city acquires supplies, equipment, materials and contractual services.
- J. "Purchasing authority" shall mean any department head authorized to purchase or otherwise enter into contracts for the City under provisions of Part 3.20.040 herein.
- K. "Responsible bid" shall mean an offer, submitted by a responsible bidder to furnish supplies, equipment, materials, or services in conformity with the bid instructions, specifications, delivery terms and conditions, and other requirements contained in the Invitation for Bids.
- L. "Responsible bidder" shall mean a bidder who is financially responsible and has the resources, judgment, skill, ability, capacity, integrity, and reliability required and necessary to perform the requirements set forth in the bids, and which will assure good faith performance.
- M. "Responsive bid" is a bid that conforms in all material respects to the Invitation for Bids.
- N. "Services" shall mean the furnishing of labor, time, or effort performed by specially trained and experienced persons, firms, or corporations rendering professional work and advice in such disciplines as the maintenance or repair of buildings or grounds, equipment or machinery, or other city-owned or operated property. Such term shall not include services rendered by city officers or employees, nor professional or technical services as defined elsewhere in this section.
- O. "Shall" denotes the imperative.
- P. "Supplies" shall mean property, including but not limited to materials, required to perform a department's routine functions.
- Q. "Technical services" shall mean design, installation, diagnostic or repair services for electrical, electronic, data/telecommunications, mechanical, and/or control systems and their components. These services are distinguished from general repair and maintenance services by their requirements for technical training and/or professional certification.

3.20.020 Purchasing Officer – Established

There is established the position of purchasing officer. The purchasing officer shall be appointed by the city manager, and shall be the head and have general supervision of the purchasing division of the Finance Department. The duties of the purchasing officer may be combined with those of any other office or position. (Prior Code § 2-56)

3.20.030 Purchasing Officer - Powers

The Purchasing Officer shall have the responsibility and authority to:

- A. Purchase or contract for supplies, services and equipment required by any city department in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the purchasing officer shall adopt for the internal management and operation of the purchasing division and such other rules and regulations as shall be prescribed by the city council or city manager;
- B. Negotiate and recommend execution of contracts for the purchase of supplies, services and equipment;

- C. Act to procure for the city the needed quantity and quality in supplies, services and equipment at least expense to the city;
- D. Discourage uniform bidding (wherein bidders conspire to submit the same cost for a given job or tangible item), and endeavor to obtain as full and open competition as possible on all purchases;
- E. Prepare and recommend to the city council rules governing the purchase of supplies, services and equipment for the city;
- F. Prepare and recommend to the city council revisions and amendments to the purchasing rules;
- G. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- H. Prescribe and maintain such forms as reasonable necessary to the operation of this chapter and other rules and regulations;
- I. Supervise the inspection of all supplies, services and equipment purchased to insure conformance with specifications;
- J. Recommend the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any department or which may become unsuitable for city use;
- K. Maintain a bidders' list, vendors catalog file and records needed for the efficient operation of the purchasing division. (Prior Code § 2-57)

3.20.040 Exemptions from centralized purchasing.

The City Manager, with the approval of the city council, may authorize in writing any department head (hereinafter "purchasing authority") to purchase or contract for, or to delegate to qualified staff members the authority to purchase or contract for specified supplies, services and equipment independently of the purchasing department; but shall require that such purchases or contracts be made in conformity with the procedures established by this chapter, and shall further require periodic reports from the department on the purchases and contracts made under such written authorization. (Prior Code § 2-58)

3.20.045 State and Local Agency Contracts

The bidding process described in this code may be waived when advantageous for the City, and authorized by the City Manager for purchase of supplies, equipment or contractual services awarded in accordance with formally adopted bidding or negotiation procedures approved by the governing boards of other California public agencies. Purchases or contracts in excess of \$20,000 shall require the approval of the city council.

3.20.060 Requisitions

City departments shall submit requests for supplies, services and equipment to the purchasing officer electronically or by standard requisition forms, for the purposes and within the limits of funds appropriated therefor. (Prior code § 2-60)

3.20.070 Bidding

Purchases of supplies, services, equipment and the sale of personal property shall be by bid procedures pursuant to Sections 3.20.100 and 3.20.110. Bidding shall be dispensed with only (1) in cases of emergency as defined in this chapter, and therefore requires that an order be placed with the best available source of service or supply; (2) when the amount involved is less than five hundred dollars (but competitive quotes shall be obtained if it is in the City's best interest to do so), (3) when the commodity can be obtained from only one vendor, due to (a) product standardization by resolution of the city council, or (b)

need for branded replacement parts or supplies for equipment of like brand; (4) when professional or technical requirements preclude competitive bidding, pursuant to Part 3.20.075 of this Section, or (5) when the city council determines that the purchase or method of purchase would be in the best interests of the city. (Ord. 1399 § 1, 1987; prior code § 2-61)

3.20.075 Professional/Technical Services Contracts

The following professional services contracts are specifically exempt from the advertising and bidding requirements of section 3.20.070:

Contracts for

- (1) legal defense, legal advice, or legal services;
- (2) architectural and engineering services;
- (3) accounting and financial services;
- (4) real estate appraisals;
- (5) transportation services consultants;
- (6) safety, environmental or hazardous material consultants.
- (7) workshops, seminars, and conferences.

Such contracts shall be awarded on the basis of professional qualifications and experience, quality of service, past performance, and negotiated prices.

3.20.076 Contract Authority

The City Manager shall have the contracting authority set forth in Chapter 2.12.060(T) of this Code.

3.20.077 Electronic Hardware and Software

Acquisition of electronic hardware and software shall be by negotiation, requests for proposal, or competitive bids, and award shall be based on 'best value' criteria as established by §3.20.15, under direction of the Information Systems Manager, and set forth in the terms of the negotiation, Request for Proposals, or bid. Alternatively, purchase of electronic hardware and software may be made in accordance with §3.20.045.

3.20.080 Purchase orders.

Purchases of supplies, services and equipment in an amount of \$500 or more shall be made only by written contract or by purchase orders. (Prior code § 2-62) (California Commercial Code § 2201)

3.20.090 Use of unencumbered funds required.

Except in cases of emergency, the purchasing officer or purchasing authority shall not issue any purchase order or otherwise contract for supplies, services or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged. (Prior code § 2-63)

3.20.095 State and Federal Grants

Where a procurement involves the expenditure of state or federal grant funds the procurement process shall comply with such state or federal laws and authorized regulations which are mandatorily applicable and which are not presently reflected in this code.

3.20.100 Formal contract procedure.

Purchases of supplies, equipment, contractual services, public projects, and sales of personal property of an estimated value greater than \$20,000 shall follow the formal contract procedure:

- A. Specifications and plans shall be subject to review and approval by the City Council prior to the solicitation of bids.

B. The advertisement for bids will be conducted as provided for in the Government Code.

C. Notice Inviting Bids. Notice inviting bids shall include a general description of the articles to be purchased or sold, or work to be performed, and shall state where bid forms and specifications may be secured and the time and place for opening of bids.

1. Published Notice. Notice inviting bids shall be published at least ten calendar days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published in the city, or if there is none, it shall be posted in at least three public places in the city that have been designated by ordinance as the places for posting public notices.

2. Bidders' List. The purchasing officer shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list.

3. Internet Posting. The purchasing officer may also advertise pending bids for purchases or sales on the city's web page.

D. Bidder's Security. When required by law or deemed necessary by the purchasing officer, bidder's security may be prescribed in the notice inviting bids.

Bidders shall be entitled to the return of their bid security; except that a successful bidder shall forfeit all or part of his or her bid security upon refusal or failure to execute the contract within ten days after the notice of award of contract has been mailed, unless the city is responsible for the delay. The city council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. Thereafter, if the city council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

E. Bid Opening Procedure. Sealed bids shall be submitted to the purchasing officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the notice inviting bids. A tabulation of all bids received shall be available for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening.

F. Rejection of Bids. In its discretion, the city council may reject any and all bids presented and, if it is in the city's best interest to do so, readvertise for bids.

G. Award of Contracts. After evaluation of bids, contract shall be awarded by the city council to the lowest responsible bidder except as otherwise provided in this chapter. In determining the lowest responsible bid, considerations shall include but not be limited to such factors as (1) whether any portion of the state sales tax payable on the article which is the subject of the bid will be rebated to the city by reason of awarding such contract to a person or firm domiciled within the city, (2) total life-cycle costs, and/or (3) residual value.

H. Tie Bids. If two or more bids received are for the same total amount or unit price, with quality, service and factors considered in Paragraph 3.20.100 (E), above, being equal and if the public interest will not permit the delay of readvertising for bids, the city council may accept the lowest bid determined by toss of a coin performed at a time as soon after the bid opening as is possible.

I. Performance Bond. The city council shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the city. If the city council requires a performance bond, the form and amount of the bond shall be described in the bidding documents. (Ord. 1333 § 1(3)(A,D), 1984; prior code § 2-64)

3.20.105 Public Projects

Public projects shall be subject to provisions of the Public Contract Code.

When the expenditure required for a public project exceeds \$20,000 approval of the city council is required before advertising for and awarding of bids.

3.20.110 Open market procedure

Purchases of supplies, equipment, contractual services and sales of personal property of an estimated value in the amount of \$20,000 or less may be made in the open market without observing the Formal Contract procedure prescribed by Section 3.20.100.

A. Minimum Number of Informal Bids or Quotations. Open market purchases shall, wherever possible, be based on at least three informal bids or quotations, and shall be awarded to the lowest responsible bidder.

B. Request for Quotations. The purchasing officer or purchasing authority shall solicit informal written bids or quotations from prospective vendors by written request, by telephone or by electronic data interchange. Quotations or informal bids shall be in writing for amounts greater than \$1000.

C. Quotations and written informal bids shall be submitted to the requestor, who shall keep a record of all quotations, bids, and open market orders for a period of one year after the submission of quotations or the placing of orders. This record, while so kept, shall be open to public inspection. (Ord. 1549 § 1, 1992; Ord. 1333 § 1(3)(E), 1984; prior code § 2-65)

D. The Purchasing Officer or purchasing authority may reject any and all informal bids, offers and quotations when, in his or her discretion, it shall be in the best interest of the City to do so.

3.20.115 Split Transactions

No person shall willfully split a single transaction into two or more transactions for the purposes of evading the bidding requirements of this section. (Public Contract Code § 10329, 20163)

3.20.120 Inspection and testing of purchases.

The purchasing officer or purchasing authority shall assure the inspection of supplies and equipment delivered, and contractual services performed, to determine their conformance with the specifications set forth in the order or contract. The purchasing officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications. (Prior code § 2-66)

3.20.130 Vehicle purchases and disposition exemption.

The purchase and disposition of fleet vehicles and other specific equipment governed by the City's Fleet Policies and Procedures, as adopted by resolution of the city council, is exempt from the provisions of this chapter. (Ord. 1643 § 1, 1997)

3.20.140 Restrictions

If any department purchases or contracts for any supplies, equipment or contractual services made contrary to the provisions of this chapter, the purchase or contract shall be void and of no effect. The head of the department making the purchase transaction shall be personally liable for the amount of the purchase or contract, or, if already paid for out of city funds, the amount thereof may be recovered in the name of the city in appropriate action therefor.

3.20.150 Penalty for violation

Any person who violates, or permits a violation of this chapter is guilty of an infraction which may be punishable as provided in Chapter 1.08 of this code.

Section 3 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 2005.

Attest:

SUSAN J. BLACKSTON
City Clerk

JOHN BECKMAN
Mayor

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held August 17, 2005, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2005, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor of the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney